IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEEVERN JOHNSON, Defendant.	No. CR 05–4063-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.

2. Statements, arguments, questions and comments by the lawyers are not evidence.

3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

5. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER _____

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard testimony from a witness who hopes to receive a reduced sentence on a pending criminal charge in return for cooperation with the prosecution in this case. This witness entered into an agreement with the government providing that if she provides substantial assistance to the government in its investigation of crimes, the prosecutor could file a motion for a reduction of her sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and, if so, how much to reduce it. The witness's testimony was received in evidence and may be considered by you. You may give the testimony of this witness such weight as you think it deserves. Whether or not certain testimony by this witness was influenced by her hope of receiving a reduced sentence is for you to decide.

You have heard evidence that a witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe this witness and how much weight to give her testimony.

INSTRUCTION NUMBER ____

The Indictment in this case charges the defendant with one offense.

Under Count 1, the Indictment charges that during April 2005, the defendant knowingly possessed a firearm, that is, a Mossberg, Model Maverick 88, 12 gauge shotgun, serial number MV09264D, in furtherance of a drug trafficking crime, that is a conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base, commonly called "crack cocaine."

The defendant has pleaded not guilty to the charge.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO._____

As I instructed you in Instruction No.____, defendant pled guilty to the crime of conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base.

During the plea hearing, defendant admitted:

One, during April, 2005, he and one or more persons reached an agreement or came to an understanding to commit the following offenses:

Object 1: To distribute 50 grams or more of cocaine base; and

Object 2: To possess with intent to distribute 50 grams or more of cocaine base.

Two, he voluntarily and intentionally joined in the agreement or understanding either at the time it was first reached or at some later time while it was still in effect;

Three, at the time defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

INSTRUCTION NUMBER ____

The crime of possessing firearms in furtherance of a drug trafficking crime has two elements which are:

One, the defendant committed the crime of conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base;

You are instructed that the defendant entered a guilty plea to the crime of conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base, and you must consider the first essential element as proven.

Two, the defendant knowingly possessed a firearm in furtherance of the conspiracy.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in the Indictment; otherwise you must find the defendant not guilty of the crime charged.

INSTRUCTION NUMBER ____

The term "firearm" means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

INSTRUCTION NUMBER ____

The phrase "possessed in furtherance of" means the firearm must have some purpose or effect with respect to the conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base; its presence or involvement cannot be the result of accident or coincidence.

Thus, to prove that the defendant possessed a firearm in furtherance of a drug-trafficking offense, it is not enough for the government to prove simultaneous possession of drugs and a firearm. Instead, the government must prove a connection between the defendant's possession of the firearm and the underlying drug offense; however, the government need not prove that the defendant actively employed the firearm by such actions as carrying, displaying, brandishing or firing it.

"Possession" of a firearm means either that a person knowingly had direct physical control over the firearm, or that a person had both the power and the intention to exercise control over the firearm, either directly or through another person.

INSTRUCTION NUMBER ____

You will note that the Indictment charges that the offense was committed "during" April 2005. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence established that the offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER ____

The "possession" element of the charged offense requires proof of what the defendant "intended" or "knew." The defendant's "intent" and "knowledge" must be proved beyond a reasonable doubt. "Intent" and "knowledge" are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. However, "intent" and "knowledge" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence. Therefore, you must consider any statements made or acts done by the defendant and all of the facts and circumstances in evidence to aid you in determining the defendant's "knowledge" and "intent."

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act was done "intentionally" if it was done voluntarily, without coercion, and not because of ignorance, mistake, accident or inadvertence.

INSTRUCTION NUMBER ____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER ____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER ____

Attached to these instructions you will find a Verdict Form. This Verdict Form is simply the written notice of the decision that you reach in this case. The answer to this Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to the Verdict Form, your foreperson will fill out the Form, sign and date it and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

_____ _____

DATE **LINDA R. READE**
JUDGE, U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEEVERN JOHNSON, Defendant.	No. CR 05-4063-LRR **VERDICT FORM**

We, the Jury, find the defendant, Leevern Johnson, _____ of the
Not Guilty / Guilty
crime of possessing a firearm in furtherance of a drug trafficking crime as charged in the Indictment.

> Note: If you unanimously and beyond a reasonable doubt find the defendant guilty of this offense, have your foreperson write "guilty" in the above blank space.
>
> If you unanimously find the defendant not guilty of this offense, have your foreperson write "not guilty" in the above blank space.

_____
FOREPERSON

_____
DATE